

**Notice of Allowability**

Application No.

10/627,519

Applicant(s)

KEPPLER, BERNHARD

Examiner

Art Unit

Robert Shiao, Ph.D.

1626

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to RCE of 10627519 filed on January 17, 2007.
2. ☒ The allowed claim(s) is/are 33-39 and 42-50, now are 1-16.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some\* c) ☐ None of the:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |  |   |
|--|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)   | 5. <input type="checkbox"/> Notice of Informal Patent Application                                 |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____. |
| 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO/SB/08),<br>Paper No./Mail Date <u>01/17/07</u> | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                               |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material                   | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance              |
|  | 9. <input type="checkbox"/> Other _____.  |

### **DETAILED ACTION**

1. This application claims benefit of the foreign application:  
GERMANY 101 03 565.9 with a filing date 01/26/2001.
2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 17, 2007, has been entered.
3. Amendment of claims 33-34, cancellation of claims 1-32 and 40-41, addition of claims 42-50 and remarks in the amendment filed on January 17, 2007, is acknowledged. Claims 33-39 and 42-50 are pending in the application. No new matter is found. Since the newly added claims 42-50 are commensurate with the scope of the invention, claims 33-39 and 42-50 are prosecuted in the case.

### ***Information Disclosure Statement***

4. Applicant's Information Disclosure Statement, filed on January 17, 2007 has been considered. Please refer to Applicant's copy of the 1449 submitted herein.

### ***EXAMINER'S AMENDMENT***

5. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be

Art Unit: 1626

filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Weihong Hsing on February 21, 2007. The application has been amended as follows:

In claim 33, line 1, after "A composition", insert

--of claim 38--

In claim 33, line 6, after "independently represents", insert

--a monocyclic or multi cyclic basic heterocycle selected from--

In claim 33, line 13, after "B' represents", insert

--a monocyclic or multi cyclic basic heterocycle selected from--

In claim 36, line 2, after "claim", delete "33", and insert

--38--

In claim 38, line 4, after "independently represents", insert

--a monocyclic or multi cyclic basic heterocycle selected from--

In claim 38, line 9, after "(ii) a compound of the formula", delete "(VI)", and insert

--(IV)--

In claim 39, line 4, after "B' represents", insert

--a monocyclic or multi cyclic basic heterocycle selected from--.

### ***Reasons for Allowance***

6. The following is an examiner's statement of reasons for allowance:

Claims 33-39 and 42-50 are neither anticipated nor rendered obvious over the art of record, and therefore are allowable. This invention relates to compositions containing a ruthenium (III) complex and a heterocycle. The closest reference is Keller et al. US 4,843,069, which discloses medicament formulations containing ruthenium compounds with an antitumoral action. The difference between the reference and instant claims is that instant claimed compositions have not been found. A suggestion for modification of above reference to obtain the instant claimed composition and methods of use has not been found. The methods of use using the instant compounds of formula (I) are supported by the declaration under 37 C.F.R. 1.132 dated 06/05/2006 and remarks dated 01/17/2007. Claims 33-39 and 42-50 are allowed.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance".

### ***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Shiao whose telephone number is (571) 272-0707. The examiner can normally be reached on 8:30 AM - 5:00 PM.

Art Unit: 1626

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph K. McKane can be reached on (571) 272-0699. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Joseph K. McKane  
Supervisory Patent Examiner  
Art Unit 1626

  
Robert Shiao, Ph.D.  
Patent Examiner  
Art Unit 1626

February 21, 2007